

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 19 CR 00277
)
CONCEPCION MALINEK,) Chicago, Illinois
) February 8, 2021
Defendant.) 10:00 a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS

BEFORE THE HONORABLE EDMOND E. CHANG

APPEARANCES TELEPHONICALLY:

For the Plaintiff: HON. JOHN R. LAUSCH, JR.
United States Attorney
BY: MR. CHRISTOPHER V. PARENTE
Assistant United States Attorney
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604
(312) 353-5300
christopher.v.parente@usdoj.gov

For the Defendant: MR. ROBERT L. RASCIA
650 North Dearborn Street, Suite 700
Chicago, Illinois 60654
(312) 994-9100
rrascia@rasciadefense.com

ALSO PRESENT: MS. ANNA MAITLAND

Court Reporter: Judith A. Walsh, CSR, RDR, F/CRR
Official Court Reporter
219 South Dearborn Street, Room 2118
Chicago, Illinois 60604
(312) 702-8865
judith_walsh@ilnd.uscourts.gov

1 (Proceedings heard telephonically:)

2 THE CLERK: The United States District Court for the
3 Northern District of Illinois is now in session, the Honorable
4 Edmond E. Chang presiding.

5 19 CR 277, USA versus Concepcion Malinek.

6 THE COURT: Good morning. This is Judge Chang.
7 Since we're proceeding by phone, I'll just air traffic control
8 the appearances a little bit. If I can have government
9 counsel announce his appearance for the record.

10 MR. PARENTE: Good morning, your Honor. Chris
11 Parente.

12 THE COURT: All right. And defense counsel?

13 MR. RASCIA: Good morning, your Honor. Robert Rascia
14 for Ms. Malinek.

15 THE COURT: All right. Good morning.

16 And is there anyone else who needs to make an
17 appearance on the record? I'll just pause for a second.

18 MS. MAITLAND: I'm not sure --

19 THE COURT: I'm sorry. Who is this?

20 MS. MAITLAND: This is Anna Maitland. I am the
21 victims advocate attorney and immigration attorney for this.
22 I don't know if I need to be on the record.

23 THE COURT: Okay. Well, just to be on the safe side,
24 why don't you -- if you could spell your first and last name.

25 MS. MAITLAND: Anna, A-n-n-a, Maitland,

1 M-a-i-t-l-a-n-d.

2 THE COURT: All right. Thank you.

3 All right. This is a status hearing because there
4 has been some communication between counsel and the courtroom
5 deputy about whether any person is going to be testifying at
6 the sentencing in the courtroom as opposed to by some remote
7 means. So let me just make sure I have a sense of what the
8 proposals are at least.

9 So, Mr. Parente, for the government, are you
10 proposing some victim testimony but by remote means? Is that
11 correct?

12 MR. PARENTE: Yes and no, Judge. To be clear, these
13 are going to be victim impact statements, so this will not be
14 testimony on factual disputes that the parties have. This
15 will be the victims of the offense making a statement to the
16 Court about how this crime affected them. So it's not going
17 to be, this will not be testimony.

18 THE COURT: Okay. They will describe, however,
19 things like living conditions and how the offense impacted
20 them; is that correct?

21 MR. PARENTE: That's -- that's possible, yes, Judge.
22 I told them this is their chance to address your Honor with,
23 you know, how this crime impacted them and kind of have given
24 them a blank slate in that regard.

25 THE COURT: All right. And --

1 MR. PARENTE: But nothing towards enhancements for
2 guideline purposes.

3 THE COURT: Right. Well, I understand for guidelines
4 purposes, but I asked about living conditions in particular
5 because I see from the defense sentencing filing that the
6 defense plans on calling a number of witnesses. And one topic
7 of testimony is supposedly going to be living conditions.

8 So I do have some concern that this will go beyond
9 the usual victim impact statement where there might be some
10 factual dispute. It might be a modest one, but there might be
11 some factual dispute that might turn this more into 3553
12 testimony as opposed to just a victim impact statement.

13 But let me just make sure, though, you do want to
14 promote -- to proceed by remote means?

15 MR. PARENTE: Right, Judge. The -- and this is
16 primarily for two. Most of the victims have written
17 statements that I'll either read to the Court or submit in
18 advance depending on timing and some other things. Two of the
19 victims do want to be heard by your Honor.

20 They do unfortunately fear Ms. Malinek, and they
21 think that the trauma of even seeing her in person again will
22 trigger additional psychological harm, and so they've asked to
23 be able to participate through a video feed where you'll be
24 able to possibly see them, Judge, at least hear them and
25 they'll be here in the office building with us, but they don't

1 want their names used, and they don't want to have to see the
2 defendant again. And again, I think that's consistent with
3 the defendant's agreement to pay restitution for counseling
4 for these individuals which they're going to need based on
5 what happened to them in this crime.

6 So for the reasons that -- for the same reason that I
7 can read a letter to them -- to your Honor from them, I don't
8 understand what prejudice the defendant has by allowing these
9 people to participate from a remote location and not in
10 person.

11 THE COURT: Right. I mean, I understand there's no
12 Sixth Amendment confrontation right, and so even reliable
13 hearsay is permitted in the form of written statements or
14 here, testimony by remote means. So, I mean, I don't have a
15 problem in principle although I'll, of course, let Mr. Rascia
16 address this too.

17 But I think you mentioned, though, the wrinkle that I
18 had not been aware of is that they don't want their -- so they
19 don't want their names used. You're willing to disclose,
20 though, to the defense counsel who they are?

21 MR. PARENTE: Of course, your Honor. Your Honor and
22 the defense counsel will know who they are. Just because it
23 is a public proceeding, and again, there's been threats to
24 family members back in Guatemala, so we're just trying to
25 protect the privacy as they're entitled to under 3771 as much

1 as we can. But obviously, the defense counsel and your Honor
2 will be told who these people are.

3 We would just ask that when we're referring to them,
4 we use the numbers in the indictment which I will give your
5 Honor and defense counsel.

6 THE COURT: Okay. So, Mr. Rascia, what's your
7 position?

8 MR. RASCIA: Judge, after I spoke with Mr. Parente
9 and he let me know that the witnesses he intended to present
10 were essentially going to be giving victim impact statements,
11 I don't have an objection to them doing that remotely. You
12 know, if he wants to proceed that way, that's his choice,
13 though I don't have a particular problem with that. I have
14 discussed that with my client.

15 THE COURT: Okay. Yes. Well, I mean, I think even
16 if the statement starts to border on a potential factual
17 dispute, even there, there is no Sixth Amendment confrontation
18 right. So I think I would just, of course, have to weigh the
19 reliability of the statements. And I think they could easily
20 do that over a video feed and indeed, even do that with a
21 written statement.

22 So I think the victims ought to be able to testify by
23 remote means, as I said, even if it strays into something that
24 is more akin to a factual dispute.

25 Do you have any problem with the victim anonymity in

1 terms of in court? Mr. Parente obviously will disclose to you
2 who they are.

3 MR. RASCIA: Judge, I don't. As long as my -- I have
4 the information and my client has the information, I'm fine
5 with that. They don't need to disclose it on the record.

6 THE COURT: Okay. And then let me ask, while we have
7 you anyway, Mr. Rascia, you're still planning on calling these
8 six witnesses in person, or are they going to testify by
9 remote means?

10 MR. RASCIA: Well, Judge, there's a little bit of a
11 problem with doing it remotely for some of these people.
12 Number one, I'd have to bring them all into my office because
13 they don't have the ability or the equipment to participate
14 remotely other than if they're in my office.

15 The second problem that creates is, the only room in
16 our suite that's big enough to accommodate people safely is
17 the conference room. And I learned last week while trying to
18 do a remote proceeding, the internet connection keeps getting
19 interrupted in the conference room for reasons I'm not quite
20 sure of. In my individual office that's never a problem, but
21 there's just not enough room.

22 So I'd prefer to present these witnesses live in
23 court, although we do have an IT person coming out, supposed
24 to be here on Wednesday to try to solve the problem with the
25 conference room. All of these witnesses except Mary Berrera

1 and Jeffrey Malinek require a Spanish language interpreter.

2 THE COURT: Okay. Yes, I don't have an objection to
3 having them presented in court. I do appreciate that you've
4 taken some steps to try to avoid that, but I don't have a
5 problem with that because Ms. Malinek is -- so she, of course,
6 is entitled to be there in person. And she still wants to be
7 there in person, correct, Mr. Rascia?

8 MR. RASCIA: She does, Judge. I've had multiple
9 conversations with her on that subject, but she prefers to be
10 live in court with you.

11 THE COURT: Okay. That's --

12 MR. RASCIA: Either way, I'm going to have to be
13 there, so...

14 THE COURT: Right. Yes, and that's fine. It is her
15 right. And with regard to your witnesses, I would just refer
16 you again to the standing order on the precautions that we're
17 going to take. And the one thing I do want to ask you about
18 there is, and I don't think the government would object, but I
19 should confirm that for -- in the standing order which is
20 designed mostly for jury trials, I have the -- but it does
21 apply to bench proceedings. Typically, the witnesses take
22 their masks off and that way, of course, is to allow the jury
23 to assess credibility.

24 Do you have an objection to presenting your witnesses
25 with their masks on?

1 MR. RASCIA: Judge, I don't as long as the
2 interpreter is able to hear the witness appropriately and
3 accurately translate back. I think as long as the equipment
4 is able to pick up what they're saying adequately, I'm not
5 concerned about the oral presentation of the interpreter.

6 THE COURT: Okay. We'll work offline with the
7 courtroom deputy and the interpreter's office on exactly how
8 to format this. And we'll also bring Systems into it because
9 the video component of the victim statements is going to
10 require some additional, I think, installation or a cart that
11 we might have to bring in so that everyone can see what's
12 happening.

13 And, Mr. Parente, you need interpreters for the
14 victims; is that correct?

15 MR. PARENTE: Yes, your Honor.

16 THE COURT: Okay. So that will be another wrinkle
17 that we'll have to work off. And again, we can do that
18 offline. I just want to make sure that we have the basics
19 down for this hearing.

20 So okay. Then the bottom line then is that the
21 victims may testify by remote means even if it becomes
22 something of a factual dispute with the defense witnesses.
23 And that's again because there is no Sixth Amendment
24 confrontation right. I will assess the statements for
25 reliability, of course, as I must but otherwise, the

1 government can proceed in that way.

2 And, Mr. Rascia, just let us know maybe on -- let's
3 see. This is on the 17th. So if you can let us know by
4 Friday if you solve the remote witness issue. And if you
5 haven't, again, there or -- or even if you did, you can
6 present them in court. Just make sure to go over all the
7 safety precautions with them.

8 MR. RASCIA: I will.

9 THE COURT: All right. Okay. Is there anything else
10 we need to address today, Mr. Parente?

11 MR. PARENTE: Just to keep the Court apprised of
12 timing on the government's side, so as of now, I anticipate
13 these two victims speaking remotely. And again, I wouldn't
14 think that's going to be much longer than ten minutes total.
15 We do believe it will be one victim who will appear in person.
16 And again, I don't anticipate that to be lengthy.

17 And then there will be multiple written statements
18 that if the Court would allow, I'd like to read to your Honor
19 on behalf of the victims who do fear appearing in person. But
20 again, from the ones that I've seen so far, they're pretty
21 short letters, maybe two, three pages max. But the victims
22 will be listening into the hearing. And so I would, with the
23 Court's permission, appreciate the opportunity to read their
24 words to your Honor.

25 THE COURT: All right. Well, I think it would be

1 reasonable to have some heads-up to the defense on the -- it's
2 just like they would get written victim impact statements I
3 think ideally.

4 What are you telling the victims in terms of when is
5 the last day they can get this to you?

6 MR. PARENTE: I've told them to get them to me as
7 soon as possible, Judge. And I'm assuming I'm going to get
8 them on a rolling basis. And what I'll do is I'll just send
9 those to Mr. Rascia as soon as I receive them as well.

10 THE COURT: Okay. And yes, you should cc. the
11 courtroom deputy as well.

12 MR. PARENTE: Okay. I will do that.

13 THE COURT: All right. And then, yes, I had not
14 known that you -- so you wanted to present a victim in person.
15 Just again, make sure you go over the same safety precautions
16 that I posted to the website. And do you have any -- do you
17 have an objection to that person remaining masked?

18 MR. PARENTE: No, your Honor. I don't have an
19 objection to Mr. Rascia's witnesses being masked or unmasked,
20 whatever his preference is.

21 THE COURT: Okay. Yes, but I'm saying, you don't
22 have an objection to presenting your in-person victim with a
23 mask on?

24 MR. PARENTE: No, your Honor.

25 THE COURT: And, Mr. Rascia, do you have any problem

1 with that?

2 MR. RASCIA: No, your Honor.

3 THE COURT: Okay. All right. We'll obviously have
4 some offline conversations to just make sure the logistics
5 work out, but I think we've got the plan in place.

6 Mr. Rascia, anything else?

7 MR. RASCIA: Judge, no. We're good to go.

8 The one issue that I have talked about with
9 Mr. Parente which I know is a concern to him is the
10 restitution and the ability to pay the restitution. There is
11 a process that's ongoing to obtain funds through the
12 refinancing of the home. The loan has not been funded yet,
13 but it is in process, and all the necessary paperwork has been
14 submitted. So hopefully, that will be finalized before the
15 17th.

16 THE COURT: All right. Is that a -- is there a
17 dispute over the amount, or are you just talking about sources
18 of funds?

19 MR. RASCIA: I think we're really close on the
20 amount. Prior to the change of plea, Mr. Parente sent me
21 preliminary figures. I don't think there's going to be much
22 of a change in that. So we're prepared to move forward based
23 on the figures that Mr. Parente had previously provided. And
24 now the loan is in process to make those funds available.

25 THE COURT: All right. There is a provision in the

1 restitution statute that allows us another 90 days if we need
2 to narrow down any lingering disputes. But yes, if we can get
3 it done on the 17th date, that would be ideal, but we do have
4 that little bit of leeway.

5 MR. RASCIA: Judge, I'm hopeful that will be ready on
6 the 17th. If it's not the 17th, I would expect it would be
7 very shortly thereafter.

8 THE COURT: All right.

9 MR. RASCIA: Meaning the funding of the loan.

10 THE COURT: All right. Okay. Ms. Maitland, did you
11 want to say anything?

12 MS. MAITLAND: No. Thank you, your Honor.

13 THE COURT: All right. Okay. Well, then this
14 hearing is concluded. And again, we'll be in touch about
15 nailing down the logistics. Thank you. We're adjourned.

16 MR. PARENTE: Thank you.

17 MR. RASCIA: Thank you.

18 (Proceedings adjourned at 10:18 a.m.)
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C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the telephonic proceedings had in the above-entitled case before the Honorable EDMOND E. CHANG, one of the judges of said court, at Chicago, Illinois, on February 8, 2021.

/s/ Judith A. Walsh, CSR, RDR, F/CRR July 12, 2021

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division